

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
FROM THE COMMISSIONER OF REVENUE**

IN THE MATTER OF)	OAH No. 12-0315-CSS
T L. E)	CSSD No. 001140628
_____)	

DECISION AND ORDER

I. Introduction

This case is T L. E’s appeal of an order issued by the Child Support Services Division (Division), which denied her request to lower her monthly child support obligation. The order being appealed is the Division’s Decision on Request for Modification Review, which denied Ms. E’s petition for a downward modification of her ongoing child support order for her child, B. This order was issued on July 20, 2012.

On November 29, 2012, a hearing was held to consider Ms. E’s appeal. E L, the custodial parent, participated. Ms. E also participated. The Child Support Services Division (Division) was represented by Erinn Brian, Child Support Services Specialist. The record closed at the end of the hearing.

Having reviewed the record in this case and after due deliberation, I conclude that the Division’s order should be upheld. Ms. E’s ongoing child support obligation for B should remain at \$285 per month, because there has not yet been a change in circumstances that would justify a modification of child support.

II. Facts

This case is a modification action.¹ Ms. E has another child support obligation for a child who has a different father and is older than B. The Division denied Ms. E’s request for modification review for her child support order for B because the Division determined that there would not be a 15% change in Ms. E’s ongoing child support amount based on Ms. E’s ability to earn at least an income based on minimum wage earnings plus a PFD. Ms. E’s current ongoing child support was set based on an estimate of her income using her wages in 2005.²

¹ Alaska Civil Rule 90.3(h) governs modification actions.
² Exhibit 1 & Recording of Hearing.

The Division denied Ms. E's request for a downward modification, because, based on an income based on minimum wage earnings plus a PFD, the Division calculated that her ongoing monthly child support amount would not result in a 15% increase from the current amount.³ After the Division denied her request for a downward modification, Ms. E requested a formal hearing.⁴

At the hearing, Ms. E said that she is not sure what she earns in a year. She admitted that she works for unreported wages and does not have any disability that would prevent her from working full-time at a minimum wage job.⁵

III. Discussion

In a child support hearing, the person who filed the appeal, in this case Ms. E, has the burden of proving by a preponderance of the evidence that the Division's order is incorrect.⁶ At the hearing, Ms. E did not show that the Division's determination that her ongoing child support obligation for B should not be modified was incorrect.⁷

Civil Rule 90.3 allows a child support amount to be modified if the party requesting the change shows that a material change of circumstances has occurred.⁸ The rule states that a material change of circumstances "will be presumed" if the modified support amount would alter the outstanding support order by 15 percent.⁹ The evidence in the record shows that a material change of circumstances has not occurred since Ms. E's ongoing child support was set at \$285 per month in 2005.

Civil Rule 90.3 provides that an obligor's child support amount is to be calculated based on his or her "total income from all sources."¹⁰ The child support liability is calculated as a certain percentage of the obligor's adjusted annual (net) income, depending on the number of children for whom support is to be paid.¹¹

³ Recording of Hearing.

⁴ Exhibit 4.

⁵ Recording of Hearing Testimony of Ms. E.

⁶ Alaska Regulation 15 AAC 05.030(h).

⁷ Recording of Hearing.

⁸ Alaska Civil Rule 90.3(h)(1).

⁹ Alaska Civil Rule 90.3, Commentary X.

¹⁰ Alaska Civil Rule 90.3(a)(1).

¹¹ Alaska Civil Rule 90.3(a).

Income can be imputed to an obligor in cases of unreasonable voluntary underemployment.¹² The Alaska Supreme Court has recognized that an obligor parent should not be locked into a particular job or field, nor prevented from seeking personal or professional advancement.¹³ On the other hand, a noncustodial parent who voluntarily reduces his or her income should not automatically receive a corresponding reduction in his or her child support obligation.¹⁴

Obligor parents should not always have to pay support based on their maximum earning capacity when they choose to earn less than they could.¹⁵ The custodial parent or relation should not, however, be forced to finance the noncustodial parent's lifestyle choice if that choice is unreasonable given the duty to provide child support.¹⁶ The Alaska Supreme Court has indicated that the circumstances surrounding an obligor's failure to maximize earnings should be carefully considered, and then a determination made about whether, under all the circumstances in the case, income should be imputed.¹⁷

If she is not earning a cash income at least equal to the Alaska minimum wage plus a PFD, Ms. E has not shown that the Division's determination that she is unreasonably underemployed was incorrect. Ms. E has a child support obligation. Ms. E's children need her to make her best efforts to provide her share of their support.

IV. Conclusion

I conclude that the Division correctly denied Ms. E's request for a downward modification of her ongoing child support. The child support amount in her current order was calculated using the primary custody formula in Civil Rule 90.3(a).

¹² Alaska Civil Rule 90.3(a)(4).

¹³ *See Pattee v. Pattee*, 744 P.2d 659 (Alaska 1987).

¹⁴ *See Pattee v. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

¹⁵ *See Pattee v. Pattee*, 744 P.2d 659 (Alaska 1987).

¹⁶ *See Olmstead v. Ziegler*, 42 P3d 1102 (Alaska 1987).

¹⁷ *See Pattee v. Pattee*, 744 P.2d 659, 662 (Alaska 1987).

V. Child Support Order

The Division’s Decision on Request for Modification Review issued on July 20, 2012, is affirmed.

DATED this 30th day of November, 2012.

By: Signed _____
Mark T. Handley
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. The undersigned, on behalf of the Commissioner of Revenue and in accordance with AS 44.64.060, adopts this Decision and Order as the final administrative determination in this matter.

Under AS 25.27.062 and AS 25.27.250, the obligor’s income and property are subject to withholding. Without further notice, a withholding order may be served on any person, political subdivision, department of the State, or other entity.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 and Alaska Rule of Appellate Procedure 602(a)(2) within 30 days after the date of this decision.

DATED this 19th day of December, 2012.

By: Signed _____
Signature
Terry L. Thurbon _____
Name
Chief Administrative Law Judge _____
Title

[This document has been modified to conform to the technical standards for publication.]